

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2010-15638
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 7, 2010
St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on April 7, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On October 23, 2009, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On December 16, 2009, the Medical Review Team denied claimant's application stating that claimant could perform her prior work.

(3) On January 15, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On January 18, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 19, 2010, the State Hearing Review Team again denied claimant's application stating that a neuropsychological evaluation, dated June 2009, showed the claimant's full scale I.Q. was 97, verbal I.Q. was 90, and performance I.Q. was 107. (Page 67). Her MMPI test was considered invalid. (Page 58) Her memory testing showed average general memory skills and average working memory skills. (Page 55) Her findings were consistent with an organic mental disorder associated with carbon monoxide poisoning. (Page 54) A neurological examination, dated October 2009, showed the claimant gave clear and concise history. Speech and language were normal. Affect was appropriate. Her motor examination was 5/5 in both the upper and lower extremities without atrophy and fasciculation. Upper and lower extremities reflexes were +2/4 bilaterally. Gait was normal. An EEG was normal and brain CT was negative. The claimant had an episode of altered mentation on October 18, 2009. (Page 85) On November 2, 2009, the claimant had no significant weakness. Deep tendon reflexes were equal bilaterally. There was pain to palpation throughout the cervical, thoracic and lumbar musculature as well as over 12 paired trigger points. Muscle status score was 29/30. (Records from DDS) EEG, dated November 2009, was normal. (Records from DDS) A neuropsychological evaluation was said to be consistent with claimant's reported carbon monoxide poisoning. Her I.Q. skills were in the normal or average range and her memory testing showed average, general memory skills and average working memory skills. It is noted that her MMPI was noted to be invalid. She had chronic pain and multiple positive trigger points. Her neurological examination was otherwise unremarkable. She reported a possible seizure-type event. Her EEGs have been

normal. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled, light work avoiding unprotected heights and dangerous moving machinery. In lieu of detailed work history, the claimant will be returned to other work.

Therefore, based on the claimant's vocational profile of closely approaching advanced age at 52, a high school equivalent education and a history of unskilled and semi-skilled work, MA-P is denied using Vocational Rule 201.13 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days.

(6) Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5' 6 1/2" tall and weighs 175 pounds. Claimant has an [REDACTED] in [REDACTED] a certified small business certificate, and is a licensed [REDACTED]. Claimant is able to read and write and does have basic math skills, and is able to count money.

(7) Claimant last worked October 2009 as a teaching assistant and bus aide. Claimant has also worked as a child care assistant teacher and in preschool for [REDACTED]. S [REDACTED] in sales as a cashier and a customer service representative, and as a hair stylist.

(8) Claimant alleges as disabling impairments: memory loss, seizures, nose bleeds, sinus problems, carbon monoxide poisoning in 2008, poor circulation and pain, constant headaches, muscle spasm, anxiety, confusion, depression and memory problems.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R

400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3)

the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least

equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since October 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant last worked October 2009. Claimant's impairments do not meet duration. The objective medical evidence on the record indicates that a physical examination of November 17, 2009, indicates the patient was well developed, well nourished, and appeared in no acute distress. HEENT: NC/AT, OP clear with no erythema. Eyes: no papilledema. Neck: subtle, no bruits heard. Heart: Regular rate and rhythm. Lungs: CTAB, no wheezing or crackles heard. Abdomen: NT/ND. Musculoskeletal extremities: no ECC. Skin: no rashes seen. In the neurological examination, there was no new onset symptoms or signs that localized to the vertebral base or carotid circulation since she was last seen November 2, 2009. Cranial nerves II through XII are intact. Strength was 5/5 in all extremities with no pronator drift. Sensory examination: There was normal sensation to light/sharp touch, vibration, joint position. Reflexes: DTRs 2-3+ and symmetrical, plantar reflex showed downgoing toes bilaterally. Cerebellar function: F and F, W and L bilaterally. Gait was normal. Mental status exam: Oriented x3. Her systolic blood pressure was slightly high at 140. Hemodynamic signs were normal and were appropriately charted. Her EEG was normal. She

was diagnosed with widespread fibromyalgia pain syndrome and medicated with [REDACTED] and [REDACTED] (Pages 112, 113)

Claimant had an EEG on November 5, 2009, which indicated a normal awake and drowsy EEG. There was no asymmetry seen. There were no epileptiform discharges noted. (Page 114)

It should be noted that claimant has worked since she had carbon monoxide poisoning in 2008. Claimant was working until October 2009.

A Medical Examination Report in the file, dated November 3, 2009, indicates that claimant was normal in all areas of examination except that she has sinusitis and congestion and that she had a temporary disability to be determined by a neurologist. (Page 100)

A physical capacities evaluation report summary, dated November 2, 2009, indicates that claimant was able to ambulate to the clinic without assistance. She was able to dress herself without assistance. She demonstrated the ability to ambulate in crowds, but had difficulty with crawling because of her neck and head pain. Her standing and walking tolerances were sufficient for up to 30 minutes prior to increased perception of pain. Migraine pain and neck and shoulder pain were the primary limitations based on client's presentation. Client demonstrated the ability to occasionally lift 10 pounds from knee height to chest height. Client had difficulty lifting from floor height and overhead. Claimant's greatest challenge is handling where client is challenged to stand or walk for an 8-hour day and also had greater problems with transitioning from side sitting on the ground to standing, and similarly with kneeling or tall kneeling and standing. Currently, no classification indicates that claimant is not able to function at the sedentary level, indicating claimant cannot safely lift 10 pounds or tolerate 8 hours of standing and/or sitting on a consistent basis. The doctor indicated that claimant would not be able to return to her prior work based

upon her presentation at the clinic, based upon the fact that she should not be lifting the children.

(Page 89)

A neurological evaluation, dated October 18, 2009, was basically normal. EEG was normal. Recent brain CT that was negative. (Pages 85, 86)

A clinical neuropsychological evaluation, dated June 15, 2009, indicates that claimant presented herself as appropriately pleasant and cooperative. She related well to the examiner and communicated in a spontaneous manner. She was able to understand and follow examination instructions and she completed all tasks in a prescribed manner. She persevered well when confronted with difficult tasks and appeared to put forth her best effort. Her speech was clear and intelligent, and her rate of speech production was variable. There were some delays observed. Her psychomotor speed appeared normal. Her overall level of effective expression was somewhat depressed. Her manner of attire was appropriate from this standing. (Page 72) Her mental status exam was basically normal and she fell into the average to superior scores in a performance subtest. (Pages 60-66)

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than

medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: memory loss, depression, confusion and anxiety.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is a mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her

impairments. Under the Medical-Vocational guidelines, a younger individual (age), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 16, 2010

Date Mailed: June 17, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/cv

cc:

